

1985 June 14

[PIKIS, J]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ALPAN (TAKI BROS) LIMITED,

Applicants

v.

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF FINANCE,
2 THE DIRECTOR OF THE DEPARTMENT
OF CUSTOMS AND EXCISE,

Respondents

(Case No 147/84)

Customs and Excise Law, 1978 (Law 18/78)—Clearance of goods from customs—Refused in anticipation of changes in the import duty legislation—Which were approved later in the day and a bill was introduced in the House of Representatives—No sanction in Law for the refusal—Section 7(1) of the Law

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Rule of Law—Public Officers—Can only derive authority for their actions from the Law—The rule of Law binds Public Officers to act under the Law and in accordance with its provisions

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Administrative Law— Administrative acts or decisions—Administrative action purporting to cure an illegal or invalid administrative act—Must be fashioned to the legal and factual regime obtaining at the time the defective decision was taken.

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After the applicants had completed the necessary formalities for the removal of items of furniture from a bonded warehouse they attended, at 8 30 a.m. on 12.1.1984, before the Customs Authorities in order to clear the goods On instructions from their

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Superiors the Customs officials refused to clear the goods or accept payment of the amount offered. These instructions were issued in anticipation of changes in the import duty legislation and in accordance with the same instructions the bonded warehouse was closed. A meeting of the Council of Ministers held later on the morning of 12.1.1984 approved a bill for the increase of import duties that was laid before the House of Representatives at 4.30 p.m. on the same day. The Customs authorities agreed to the clearance of the goods on 15.1.1984 but subject to the payment of the revised duties; and despite the protestations of the applicants, duty was exacted in accordance with the provisions of the bill pending before the House of Representatives.

Upon a recourse against the validity of the refusal to clear the goods and against the closure of the particular private bonded warehouse, counsel for the respondent conceded that the action of the customs officials on the morning of the 12.1.1984 was illegal because section 7(1)* of the Customs and Excise Law, 1978 (Law 18/78) leads to the conclusion that at 8.30 a.m. of 12.1.1984 no bill could have been pending before the House of Representatives and in consequence there was no sanction in Law for the action of the respondents. Notwithstanding acknowledgment of the illegality Counsel for the respondent argued that the wrongful act was remedied by the decision of the 15.1.1984 because the bill, after its introduction, took effect just after the midnight of 11.1.1984.

Held, that there was no sanction in Law for the action of the respondents of the morning of 12.1.1984; that public officers can only derive authority for their actions from the Law; that no one, however high he may stand, can override its provisions; that the rule of Law binds public officers to act under the Law and in accordance with its provisions and never in disobedience or contrary to them; that the Law is supreme, no one is above it (p. 1209 post); that administrative action purporting to cure an illegal or

* Section 7(1) provides that in case a bill is laid providing for the amendment of a customs duty the amended customs duty as set out in the bill is imposed, collected and paid from the date of the laying of the bill before the House of Representatives.

invalid administrative act must be fashioned to the legal and factual regime obtaining at the time the defective decision was taken; that obviously the decision of 15.1.1984 was not meant to and did not accomplish the above objective; that, on the contrary, it aimed to take advantage of the illegal action of the respondents by the issue of a new decision fashioned not to the legal regime of the morning of 12.1.1984 but to the illegal instructions issued to refrain from applying the Law as it then stood; accordingly the sub judice decisions must be set aside.

Sub judice decisions annulled.

Cases referred to:

- Campbell v. Strangeways* [1877] 3 C.P.D. 105;
- Tomlison v. Bullock* [1879] 4 Q.B. 203 at p. 232;
- Grigoropoulos v. Republic* (1984) 3 C.L.R. 449;
- Anastassiou v. Demetriou and Another* (1981) 1 C.L.R. 581;
- Gourriet v. Union of Post Office Workers* [1977] 1 Q.B. 729 at pp. 761, 762;
- Constantinidou v. Republic* (1974) 3 C.L.R. 416 at p. 418;
- Papadopoulos v. Municipality of Nicosia and Another* (1974) 3 C.L.R. 352 at pp. 356-357;
- Sevastides v. Republic* (1968) 3 C.L.R. 309 at pp. 318-319;
- Director of Department of Customs and Excise v. Graecian Hotel Enterprises Ltd.*, to be published in (1985) 1 C.L.R.

Recourse.

Recourse against the refusal of the respondents to clear items of furniture from a bonded warehouse on the 12.1. 1984.

K. Michaelides with *M. Georghiou*, for the applicants.

M. Photiou, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants completed by the afternoon of 11th January, 1984, the necessary formalities for the removal of items of furniture from a bonded warehouse. At 8.30 the following morning they attended before the Customs authorities in order to clear the goods expressing readiness to pay the duties prescribed by the Law. On instructions from their superiors the Customs officials charged with the duty of applying the Law relevant to the clearance of goods, refused to clear the goods or accept payment of the amount offered. The instructions were issued, as admitted, in anticipation of changes in the import duty legislation expected to take effect later that day with the introduction of a Bill before the House of Representatives. In accordance with the same instructions the bonded warehouse, where the furniture were stored, was closed. A meeting of the Council of Ministers held later on the morning of 12.1.1984 apparently discussed proposals for changes in Customs legislation. They approved a bill for the increase of import duties that was laid before the House of Representatives at 4.30 p.m. on 12.1.1984.

The Customs authorities agreed to the clearance of the goods three days later but subject to the payment of the revised duties. Despite the protestations of the applicants, duty was exacted in accordance with the provisions of the bill pending before the House of Representatives. The bill was eventually enacted into Law early in March 1984(1). In its final form the bill reflected a number of amendments made to its provisions by the House of Representatives. The applicants contest in these proceedings the legality of the refusal of the respondents to clear the goods on 12.1.1984 and the validity of the decision of 15.1.1984. It is their case that respondents had no right in Law to refuse to clear the goods on 12.1.1984 for the reasons given and that the introduction of a bill later that date in no way validated their refusal. For the Republic it was asserted that the introduction of the bill later on 12.1.1984 validated respondents' action as the bill took effect retrospectively from the first moment of 12.1.1984.

(1) Law 15/84.

In their addresses counsel focused attention on the implications of Art. 24.3 of the Constitution and s.7(1) of the Customs and Excise Law - 18/78. Art. 24.3 permits by way of exception to the rule against retrospective imposition of taxes, the collection of duty from "the date of the introduction of the relevant bill", while s.7(1) purports to give statutory effect to this provision in the context of the Customs and Excise legislation. 5

The rival submissions were focused on eliciting the time at which the bill took effect in order to establish whether the refusal of the respondents to accept duty at the rate prescribed by Law at 8.30 on the morning of 12th January, 1984, was retrospectively validated. Counsel for the applicants while agreeing that as a general rule the Law takes no notice of fractions of the day and "date" (ημερομηνία) encompasses the entire period of 24 hours of the specified day of the calendar month, he pointed out, there are exceptions to the rule, one being such interpretation must be avoided whenever it would lead to absurd results (1). The caselaw also suggests notice may be taken of fractions of a day in cases involving a dispute between the rights of citizens(2). The present case, counsel submitted, is exceptional and application of the ordinary rule of interpretation of "date" would lead to absurd as well as unjust results. Counsel for the Republic, on the other hand, submitted there is no cognizable reason for departing from the ordinary interpretation of the word "date". 10
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In the course of the hearing I pointed out to counsel that examination of the legality of the action of the respondents on the morning of 12th January, 1984, raises a far more important question of constitutional Law, namely, the power, if any, of public officers to act contrary or in disregard to the Law. That is the true dimension of the question to be answered. Its resolution also brings into question the legality of the order of superior Customs officials to their subordinates to desist from applying the 30
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(1) *Campell v. Strangeways* (1877) 3 C.P.D. 105, the dog licence case where it was decided that lack of a licence at a specified fraction of the day was not cured by taking out the necessary licence later on the same day.

(2) *Tomlinson v. Bullock* [1879] 4 Q.B. 230, 232.

Customs and Excise legislation in anticipation of changes to its provisions. At the request of the Court counsel for the Republic sought the opinion of the Attorney-General on the matter as the issue raises questions of constitutional
5 Law of far reaching importance.

At the adjourned hearing counsel for the Republic acknowledged the action of the Customs officials on the morning of 12th January, 1984, was illegal in what he described "a narrow legal sense." The learned Attorney-Ge-
10 neral, counsel informed me, is of a like opinion as to the effect of the action of the Customs authorities on the morning of that date. Section 7(1) of the Customs and Excise Law—18/78—counsel added, the expression "ενι περιπτώ-
15 σει κατατίθεται νομοσχέδιον", in particular, leads to the conclusion that at 8.30 on the morning of 12th January, 1984, no bill could be deemed to have been pending before the House of Representatives and in consequence there was no sanction in Law for the action of the respondents.

Indeed there was none. As we had occasion to proclaim in *Grigoropoulos v. The Republic* (1) and earlier in *Anastassiou v. Demetriou and Another* (2) public officers can only derive authority for their actions from the Law. No one, however high he may stand, can override its provisions. The rule of Law binds public officers to act under
25 the Law and in accordance with its provisions. Never in disobedience or contrary to them. The Law is supreme, no one is above it. The aphorism of Thomas Fuller "Be you never so high, the Law is above you" finds true expression
30 in the Law as Lord Denning proclaimed in *Gourriet v. Union of Post Officer Workers*(3).

I am glad in the end there was concurrence of opinion that the action of the Customs officials on the morning of 12th January, 1984, was illegal. No expediency can justify
35 departure from the dictates of the Law, and far less disobedience thereto.

(1) (1984) 3 C.L.R. 449.

(2) (1981) 1 C.L.R. 581.

(3) [1977] 1 Q.B. 729, 761, 762. Lord Denning introduces his last book «Landmarks in the Law» with his pronouncement in *Courriet*, espousing the aphorism of Thomas Fuller.

Notwithstanding acknowledgment of the illegality of the refusal of the Customs authorities to clear the goods on the 12th January, 1984, counsel for the Republic argued, their wrongful act was remedied by the decision of the 15th January, 1984. The way he put it is as follows: The Bill, after its introduction, took effect just after the mid-night of 11.1.1984. So its provisions were in force at 8.30 on that morning; consequently the decision of 15.1.1984 to clear the goods upon payment of duty prescribed by the Bill was in accordance with the Law viewed retrospectively. Thereafter applicants forfeited any legitimate interest they might have to complain, a prerequisite for entertaining a recourse. The existence of a legitimate interest at all stages up to and including the time of the hearing is necessary for the justiciability of a recourse⁽¹⁾. Counsel for the Republic argued applicants lost on 15.1.1984 any cognizable interest they might have to complain for the wrongful inaction of the respondents on the morning of 12.1.1984. This argument wholly overlooks the nature of the illegality of the action of the respondents on the morning of 12.1. 1984, as well as the nature of the allegedly remedial decision.

Administrative action purporting to cure an illegal or invalid administrative act must be fashioned to the legal and factual regime obtaining at the time the defective decision was taken. Obviously the decision of 15.1.1984 was not meant to and did not accomplish the above objective. On the contrary, it aimed to take advantage of the illegal action of the respondents by the issue of a new decision fashioned not to the legal regime of the morning of 12.1.1984 but to the illegal instructions issued to refrain from applying the Law as it then stood. By prayers 1 and 2 I am required to review the legality of the decision of the morning of the 12.1.1984 involving, for the reasons above indicated, (a) refusal to clear the goods and, (b) closure of the particular private bonded warehouse. Both decisions were invalid, being contrary to the Law and must accordingly be annulled.

⁽¹⁾ *Mary Constantinidou v. The Republic* (1974) 3 C.L.R. 416, 418. *Demetrios Papadopoulos v. Municipality of Nicosia and Another* (1974) 3 C.L.R. 352, at pp. 356-357. *Sevastides v. The Republic* (1968) 3 C.L.R. 309, at pp. 318-319.

Nothing said in this judgment is meant to prejudge any revocatory action the respondents may decide to take in view of retrospective changes in the Law. As recently as 15th May, 1985, we reaffirmed that the administration has in appropriate circumstances a right to revoke an administrative decision (1). Any such action must be judged on its merits. What they must presently do, however, is to re-examine the application of the applicants for clearance of items of furniture from the legal and factual perspective of the morning of 12.1.1984.

In the result the decision is set aside. Let there be no order as to costs.

*Sub judice decision annulled.
No order as to costs.*

(1) Director of the Department of Customs and Excise v. Graecian Hotel Enterprises Ltd., to be published in (1985) 1 C.L.R.